IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 16783 of 2007(W)

PETITIONER:

K.R.MANOJ, AGED 45 YEARS,
S/O.KRISHNAN NAIR, FLAT NO.C4, V.B.MANOR,
KOLLAMPARAMB, DESHABIMANI.

BY ADV. SRI.A.B.JALEEL

RESPONDENTS:
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1. **SECRETARY, PERUMBAVOOR MUNICIPALITY,**
   PERUMBAVOOR.

2. **THE VILLAGE OFFICER, PERUMBAVOOR**
   VILLAGE OFFICE, PERUMBAVOOR.

3. **THE DISTRICT COLLECTOR,**
   ERNAKULAM.

BY GOVERNMENT PLEADER SRI.MOHAMMED ANZAR
BY ADV. SRI.V.M.KURIAN SC MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.16783/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SALE DEED DT. 8.12.05.

EXT.P2:- COPY OF THE LETTER OF APPROVAL ISSUED TO THE 2ND RESPONDENT DT. NIL.

EXT.P3:- COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DT. 9.12.05.

EXT.P4:- COPY OF THE NOTICE DT. 17.2.06.

EXT.P5:- COPY OF THE DETAILS OF THE BUILDING PERMITS DT. NIL.

EXT.P6:- COPY OF THE ORDER DT. 13.4.07 IN WP(C) NO.12796/07.

/TRUE COPY/

P.A. TO JUDGE

tss

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 16783 of 2007

Dated this the 31st day of October, 2007

JUDGMENT

The grievance of the petitioner is that the respondent Municipality has rejected his application for building permit for the construction of a residential building upon a small plot of 5 cents which belongs to him. Ext.P4 is the rejection order. In Ext.P4 the reason stated is that as per the 'master plan' the property is shown as paddy field. Even though several chances were given to the respondent Municipality for filing counter affidavit, till date counter has not been filed. The averments in the writ petition stands established by non traverse.

2. Heard Sri.A.B.Jaleel, the learned counsel for the petitioner and Sri.V.M.Kurian, the learned standing counsel for the Municipality. It was conceded by the Standing counsel that there is no approved and notified town planning scheme for the Perumbavoor Municipal area. The scheme is only under process of approval by the Government. Neither the approval nor notification has been issued so far. Now coming to the question whether in reality the plot is 'Nilam', the

petitioner relies on Ext.P1 title document and Ext.P2 certificate issued by the Village officer. Both in the title document as well as in village officer's certificate the property is described as 'Sthalam'. Moreover there is enough indication in Ext.P1 itself to say that the property covered by Ext.P1 is a house plot. Counsel for the petitioner relies on Ext.P5 also which will show that the same Municipality has granted permit in favour of several others to construct residential houses and other buildings in properties which are described as paddy field in the so called master plan.

3. Having regard to the circumstances which attend on this case where the petitioner, who is owner of a very small plot, has not been able to construct his residential building, I am of the view that the Municipality is not justified in meteing out a different treatment to him than what was meted out to the various persons whose names are mentioned in Ext.P5. I quash Ext.P4 and direct the Municipality to grant approval to the plan submitted by the petitioner and to issue building permit if the plan is otherwise in order. In other words, existence of the so called master plan and inclusion of the property in question as paddy field will not be a ground for rejection of the plan. Orders as directed above will be passed by the Municipality on the plan at the earliest and at any rate within one month of receiving a

copy of this judgment.

PIUS C. KURIAKOSE,
JUDGE.

Dpk